

# **LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO**

215 North D Street, Suite 204,  
San Bernardino, CA 92415-0490 • (909) 383-9900 • Fax (909) 383-9901  
E-MAIL: [lafco@lafco.sbcounty.gov](mailto:lafco@lafco.sbcounty.gov)  
[www.sbclafco.org](http://www.sbclafco.org)

---

**DATE: JANUARY 8, 2007**

**FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer**

**TO: LOCAL AGENCY FORMATION COMMISSION**

---

**SUBJECT: AGENDA ITEM #6 – REQUEST FOR DETERMINATION OF NON-DISTRICT  
STATUS FOR SAN BERNARDINO VALLEY WATER CONSERVATION  
DISTRICT RELATED TO LAFCO 3076 – CONSOLIDATION OF SAN  
BERNARDINO VALLEY WATER CONSERVATION DISTRICT AND SAN  
BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

---

## **RECOMMENDATION:**

Staff recommends that the Commission:

1. Determine that the San Bernardino Valley Water Conservation District is not a district or special district, as required by Government Code Sections 56127 and 56128, for purposes of Part 4 (commencing with Section 57000 – protest proceedings) and Part 5 (commencing with Section 57300 – completion of action); therefore, the District’s principal act shall apply; and,
2. Determine that pursuant to the District’s principal act, Water Conservation District Law (Water Code Section 74000 et seq.), the statutory references return the authority for these proceedings to Parts 4 and 5 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

## **BACKGROUND:**

On December 15, 2006, the San Bernardino Valley Water Conservation District (hereafter shown as “SBVWCD”) submitted a request for the Commission to determine it to be a “non-district” for processing of the protest proceeding and completion actions related to LAFCO 3076 – Consolidation of the San Bernardino Valley Water Conservation District and San Bernardino Valley Municipal Water District (hereafter shown as “MUNI”) (copy included as Attachment #1 to this report). LAFCO 3076 was submitted for processing by LAFCO on December 13, 2006, by MUNI. However, its

resolution initiating proceedings is currently the subject of litigation regarding CEQA compliance filed by the SBVWCD.

In evaluating the SBVWCD request, LAFCO is guided by the provisions of Government Code Sections 56127 and 56128 (copy included as Attachment #2 to this report). The provisions of Government Code Section 56128 require the Commission to grant non-district status if the District is not engaged in any of the following activities:

1. The distribution and sale for any purpose, other than for the purpose of resale, of water or of gas or electricity for light, heat, or power.
2. Furnishing sanitary sewer service or garbage and refuse collection service to the ultimate users.
3. Providing fire or police protection.
4. Acquisition, construction, maintenance, lighting, or operations of streets and highways, street and highway improvements, or park and recreation facilities, except as incident to the exercise of other lawful powers of the applicant.

The SBVWCD does not engage in any of these activities; therefore, the Commission is required to determine that it has “non-district” status for the purposes of processing a jurisdictional change application.

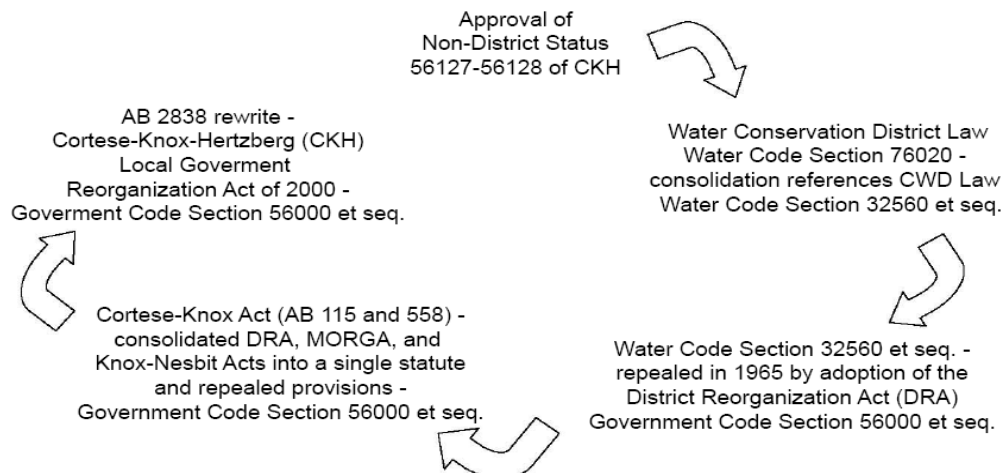
The materials submitted by the District as a part of its application include information from a previous determination of non-district status by the Commission in 1977, identified as LAFCO 1708. LAFCO 1708 related to the processing of an annexation of district-owned property consisting of approximately 40 acres identified as the “powerhouse”. However, not included in the materials submitted by the District was information related to the District’s reorganization application processed in 1993, LAFCO 2751 (copy of the final map and District’s initiating resolution included as Attachment #3) where no request for non-district status was submitted. This proposal ultimately annexed 2,929 acres and included 12,308 registered voters at the time of processing. So, there have been two annexations to the District since 1963, one processed with the request for non-district status and one without.

The effect of the non-district status determination upon LAFCO 3076 – Consolidation of the SBVWCD and MUNI will be that the processing of the protest proceedings and completion activities are to be conducted under the provisions outlined by Water Conservation District Law (Water Code Section 72000 et seq.) for a consolidation.

Of particular note in this regard, however, is that for purposes of the conduct of these proceedings, the responsibility for processing, in the staff view, will ultimately return to LAFCO. This peculiar set of circumstances arises because of the following statutory direction:

1. Non-district status granted by LAFCO -- following consideration of the consolidation proposal by the Commission and the rendering of a determination of approval, the protest proceedings and completion process would turn to the SBVWCD principal act for direction. The principal act, Water Conservation District Law, within Chapter 4 – Consolidation, Section 76020 states, “A district may be consolidated in the same manner as is provided for the consolidation of county water districts in Chapter 3 (commencing with Section 32650) of Part 8 of Division 12 of this Code.”
2. However, the County Water District Law sections identified were repealed in 1965 by the enactment of the “District Reorganization Act”, Government Code Section 56000 et seq.
3. Therefore, you are guided to look to the District Reorganization Act for direction. However, in 1985, AB 115 and AB 558, among other bills, enacted the Cortese-Knox Government Reorganization Act which consolidated the District Reorganization Act, the Municipal Organization Act of 1977 (city annexation law) and the Knox-Nesbit Act (LAFCO enabling statute) into a single set of statutes governing the operations of LAFCOs statewide. This statute was contained within Government Code Section 56000 et seq.
4. In 2000, AB 2838 rewrote LAFCO law as the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. This statute is contained within Government Code Section 56000 et seq.

Therefore, by virtue of this chain of connecting statutes, the proceedings for protest and completion shall be conducted pursuant to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act, Part 4 and Part 5 described above. Staff has reviewed this position with LAFCO Legal Counsel, Clark Alsop. Mr. Alsop has indicated his concurrence with this position. The illustration below shows how this connection of statutes occurs:



Based upon the information outlined in this report, staff's recommendation is that the Commission grant non-district status as required by Code Sections 56127 and 56128. In addition, it is staff's recommendation that the Commission note that pursuant to the provisions of the SBVWCD principal act, Water Conservation District Law, proceedings for protest and completion will be undertaken pursuant to Parts 4 and 5 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code Sections 57000 et seq. and 57300 et seq. respectively.

KRM

Attachments:

1. San Bernardino Valley Water Conservation District Request for Non-District Status
2. Government Code Sections 56127 and 56128
3. Map of LAFCO 2751 – San Bernardino County Water Conservation District Annexation No. 2 as completed and SBVWCD Resolution No. 314 Initiating the Reorganization